

In The OFFICE OF THE CLERK  
Supreme Court of the United States

ALLEGHENY INTERMEDIATE UNIT;  
BARBARA MINZENBERG, Program Director,

*Petitioners,*

v.

DAVID AND JENNIFER PARDINI,  
on behalf of themselves and on behalf of  
their minor child, GEORGIA PARDINI,

*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI  
WITH APPENDIX

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## QUESTIONS PRESENTED

Under the Individuals With Disabilities in Education Act, a child at the age of three, is required to transition from a Part C birth to three medically based program to a Part B ages three to twenty-one educational program. If a dispute arises during the transition process, which program is the stay-put placement?

Can attorney-parents of disabled children collect attorney's fees as a prevailing party?

## LIST OF PARTIES

The Petitioner is the Allegheny Intermediate Unit, a body politic organized and operating under the Pennsylvania Public School Code of 1949, as amended responsible for the provision of IDEA-Part B services for three to five year old children with disabilities in Allegheny County, Pennsylvania.

The respondents are David Pardini and Jennifer Pardini, appearing in their own right and as parents and next friends of their daughter, Georgia Pardini.

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT**

Petitioner the Allegheny Intermediate Unit, a body politic organized and existing pursuant to the Pennsylvania School Code of 1949, as amended, respectfully prays for a writ of certiorari to review the judgment of the Court of Appeals, which ruled that pendency exists during transitions from an IDEA Part C medical program to an IDEA Part B educational program and remanded the case for a determination of monetary reimbursement and attorney's fees.

**OPINIONS BELOW**

There are five opinions below, culminating in the Court of Appeals ruling that is the subject of this petition. In chronological order they are as follows:

Two separate administrative due process proceedings were initiated in June of 2003. Respondents requested an independent evaluation at public expense which was the subject of a first-tier administrative due process hearing. An additional due process hearing was requested by Respondents to dispute the appropriateness of the Individualized Educational Program (hereinafter referred to as "IEP") offered by the Petitioner. Both of these matters, at Due Process Hearing File No. 2517/02-03 and Due Process Hearing File No. 2455/02-03, were assigned to Administrative Hearing Officer Dr. Dennis Fair. On June 19, 2003, Dr. Fair issued an order that the Individual Family Service Plan (hereinafter referred to as "IFSP") was not the pendent placement. As of September 29, 2003, both due process hearings were withdrawn and discontinued at the



request of Respondents.<sup>1</sup> The Administrative Hearing Officer's orders are reproduced at Appendix 49a, 50a, and 56a. The written request to discontinue is reproduced at Appendix 57a.

Respondents filed for a Temporary Restraining Order and Preliminary Injunction while involved in the administrative due process hearings. In the U.S. District Court for the Western District of Pennsylvania, the District Court denied the Temporary Restraining Order on May 30, 2003. In August of 2003, the District Court held an evidentiary hearing on Respondents' request for a permanent injunction. The District Court denied the request for injunctive relief and held that pendency did not apply to children transitioning from Part C to Part B of the IDEA. The decision of the United States District Court for the Western District of Pennsylvania has been reported at 280 F. Supp. 2d 447. It is reproduced at Appendix 26a.

The Court of Appeals for the Third Circuit reversed the District Court, holding that pendency did apply during periods of transition from Part C to Part B programs and remanded the case for a determination of reimbursement and award of attorney's fees to the attorney parent. This decision, which is the subject of the petition, has been published at 420 F. 3d 181. It is reproduced at Appendix 1a.

An unpublished denial of rehearing *en banc* is reprinted at Appendix 47a.

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<sup>1</sup> The issue of failure to exhaust was raised by Petitioner at both the District Court and Court of Appeals. The Court of Appeals failed to address this issue in its decision.

## JURISDICTION

The panel decision of the Court of Appeals was entered on August 29, 2005. The decision of the Court of Appeals denying the petition for rehearing *en banc* was entered on October 5, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

## STATUTORY PROVISIONS INVOLVED

The issue involving the application of stay-put arises under the procedural safeguard provisions of the Individuals With Disabilities in Education Act ("IDEA") 20 U.S.C. § 1415 (Part B) and 20 U.S.C. § 1439 (Part C). IDEA provides that a prevailing party may recover an award of attorney's fees at 20 U.S.C. § 1415(d)(4)(B). IDEA is silent on whether an attorney parent is able to recover attorney's fees. These statutory provisions are reprinted at Appendix 62a, 99a, and 83a.

## STATEMENT OF THE CASE

This action arose out of an endeavor by the Respondents, David and Jennifer Pardini (hereinafter referred to as "Pardinis") to enjoin the Allegheny Intermediate Unit (hereinafter referred to as the "AIU") to provide a specific methodology, previously provided by the Pennsylvania Department of Public Welfare but unrecognized by the Pennsylvania Department of Education, to their daughter, Georgia Pardini, who has cerebral palsy, while the parties were involved in the Individuals With Disabilities in Education Act (hereinafter referred to as "IDEA") dispute resolution process.

This dispute arose during the transition process from Part C services under the IDEA to Part B. The new agency responsible for offering the Part B services was the AIU. Georgia, whose date of birth is April 18, 2000, qualified for

special education and related services in the form of an IEP on her third birthday. Prior to her third birthday, Georgia received services from the Pennsylvania Department of Public Welfare pursuant to an IFSP. The IFSP as of December 2002 was Georgia's current placement under the IDEA Part C birth to three program. Services terminated upon her third birthday, as she no longer qualified for services under Part C, the birth to three program of IDEA.

### Part C Services

Part C is a medical model and offers a program of medically based practices centering on the needs of the family rather than the individual student. Under the birth to three program, an Individualized Family Service Plan (IFSP) is family centered, focusing on the needs of the family to help the child. 20 U.S.C. § 1431, 20 U.S.C. § 1435(a)(3). An IFSP as a medical model, which requires a 25% delay in one or more developmental areas to be eligible, whereas an IEP is an educational model, which requires a 25% delay in a developmental area AND a need for specially designed instruction. 20 U.S.C. § 1432(1), 20 U.S.C. § 1432(5), 20 U.S.C. § 1401(3)(emphasis added). The fundamental goal of Part C is to provide support to improve a family's capacity to meet the needs of the child. Part C provides developmental services to a child in conformity with an IFSP. 20 U.S.C. § 1432(4).

The focus of the Part B three to five program is to allow the child to participate in appropriate preschool activities with nondisabled peers to the maximum extent appropriate. IDEA mandates that each participating state shall ensure that the obligation to make a free appropriate public education (hereinafter referred to as "FAPE") available to each eligible child residing in the state begins no later than the child's third birthday and an IEP or IFSP is in effect for the child by that date. 34 C.F.R. § 300.1221(c).

When a child reaches the age of three, states are required to develop policies and procedures to facilitate the smooth transition from an IFSP to an IEP. 20 U.S.C. § 1413(a)(15). This smooth transition does not require that the new agency provide the exact same program of services. The policies and procedures are to ensure that the new agency will provide notice to the family of the need to evaluate for eligibility, the change in the model of services, and the change in the provider agency. The purpose of these procedures is to ensure timely access to services. Smooth transition does not equate to the exact same provision of services. A child is only entitled to receive such services as are required to assist the child to benefit from special education rather than services to assist the family.

### Part B Services

Part B services refer to a program of services offered to children ages three to twenty-one through an IEP. Part B operates as an educational model of services, which focuses on a child's disability, and need for services to access the educational environment. An initial evaluation for educational services under Part B of IDEA must determine whether the child is a child with a disability and the educational needs of the child. 34 C.F. R. § 300.320(a)(1),(2).

Part B of the IDEA requires that States provide a FAPE to eligible children with disabilities beginning at age three to age twenty-one. 20 U.S.C. § 1412; 34 C.F.R. Part 300. FAPE is defined as special education and related services that meet state standards, are provided in conformity with an IEP, at public expense, under public supervision and direction, without charge, and include an appropriate preschool, elementary, or secondary school education. 20 U.S.C. § 1401(8). An IEP is centered and responsive to the needs of the individual child. 20 U.S.C. § 1414(d)(1)(A). An appropriate IEP is one that meets the procedural and